



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,425	04/02/2004	Robert G. Penlesky	018695-9352-00	1298

23409 7590 04/14/2006

MICHAEL BEST & FRIEDRICH, LLP  
100 E WISCONSIN AVENUE  
MILWAUKEE, WI 53202

EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/817,425	<b>Applicant(s)</b> PENLESKY ET AL.	
	<b>Examiner</b> Anita M. King	<b>Art Unit</b> 3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-9 and 18 is/are allowed.
- 6) ☒ Claim(s) 10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is the third office action for application number 10/817,425, Fan Mounting Spacer Assembly, filed on April 2, 2004.

***Claim Rejections - 35 USC § 112***

Claims 10 and 12-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the web" in lines 11, 15, 19, 22, 23, and 25. There is insufficient antecedent basis for this limitation in the claim.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 10 clearly indicates that a subcombination is being claimed, e.g., "a spacer configured to mount a fan housing to a web portion of a structural support." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a spacer," the fan housing and the structural support being only functionally recited. This presents no problem as long as the body of the claim also refers to the fan housing and/or the structural support functionally, such as, "for attachment to said fan housing."

The problem arises when the fan housing and the web portion of the structural support are positively recited within the body of the claim, such as, "wherein the fan housing is spaced a first distance, substantially equal to a length of the first aperture from the web in the first orientation of the body....," cited in lines 21-26 of claim 10.

Art Unit: 3632

There is an inconsistency within the claim; the preamble indicates subcombination, while in at least one instance in the body of the claim there is a positive recital of structure indicating that the combination of a spacer and a fan housing and/or a structural support are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the spacer or the spacer in combination with the fan housing and/or the structural support.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the spacer alone or the combination of the spacer and the fan housing and/or the structural support. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

***Allowable Subject Matter***

Claims 1, 3-9, and 18 are allowed.

Claim 10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 12-17 (as dependent on claim 10) would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 3,165,750 to Tell

U.S. Patent 3,547,274 to Sosinski

U.S. Patent 4,271,654 to Jungbluth

U.S. Patent 4,326,354 to Hagberg

U.S. Patent 4,719,738 to Lee

U.S. Patent 4,780,018 to Godden

U.S. Patent 5,372,447 to Chung

U.S. Patent 5,924,906 to Grafton

U.S. Patent 6,273,633 to Husson et al.

U.S. Patent 6,295,945 to Amanze


U.S. Patent 6,672,789 to Chen

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3632

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anita M. King  
Primary Examiner  
Art Unit 3632

April 12, 2006